Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

In the Matter of	)	
	)	
Implementation of Section 6002(b) of the Omnibus Budget Reconciliation Act of 1993	)	WT Docket No. 04-111
	)	
Annual Report and Analysis of Competitive Market Conditions with Respect to Commercial Mobile Services	)	

SPRINT CORPORATION REPLY COMMENTS

Luisa L. Lancetti
Vice President, Wireless Regulatory Affairs
Roger C. Sherman
Senior Attorney

Sprint Corporation
401 9th Street, N.W., Suite 400
Washington, D.C. 20004
202-585-1924

Jeffrey M. Pfaff
Attorney
Sprint Corporation
6450 Sprint Parkway
Overland Park, KS 66251
913-315-9294

May 10, 2004

Table of Contents

Summary……. ii

I. By Any Measure, There Is Effective Competition in the CMRS Market, and the Submission of Additional Data Would Not Change That Conclusion……... 2

II. The Commission Should Monitor State Regulatory Developments for Negative Impacts on the CMRS Market …….……. 6

III. The Commission Should Monitor State and Local Taxation Developments……..… 13

IV. Intermodal Competition Will be Limited Until the Commission Removes Certain Barriers to Robust Competition …… 14

V. The Commission Should Consider Tower Siting and Service Quality Together…… 15

VI. Conclusion ……. 19

Summary

1. By any measure, there is effective competition in the CMRS market, and the submission of additional data would not change this fact. The FCC properly concluded last year that "effective competition exists in the CMRS marketplace." There is no basis that would justify a different conclusion this year – especially given the recent introduction of wireless number portability. There is a wealth of public data available to the FCC (and to consumers, investors and analysts as well) concerning the CMRS industry, and the submission of yet additional or different data by carriers would not change the FCC's "effective competition" determination.

2. The FCC should monitor state regulatory developments for negative impacts on the CMRS market. Sprint agrees with CTIA that the FCC should begin monitoring in its annual reports the effects of state and local regulation of CMRS on competition and consumers. Sprint demonstrates that CMRS carriers have achieved enormous economies of scale and scope from their network operations and that these efficiencies have benefited consumers. Sprint further demonstrates that patchwork state regulation will undermine these efficiencies and economies and that customers will be harmed as a result.

3. The FCC should monitor state and local taxation developments. It is appropriate that the ninth report "focus on the benefits to consumers of effective competition such as lower prices," but the FCC should also focus on taxes paid by customers based on state requirements. Sprint documents that in many states, lower prices for wireless service have been more than offset by increases in taxes paid by wireless customers.

4. Intermodal competition will be limited until rural carriers begin providing the information wireless carriers need to honor customer port-in requests. Sprint has advised the FCC that roughly 80 percent of all rural LECs have refused to provide to Sprint the information it needs to honor customer port-in requests – even though the FCC has twice confirmed that Sprint's information request is appropriate. LEC customers cannot begin to enjoy the full benefits of intermodal competition until this recalcitrance is addressed.

5. The FCC should consider tower siting and service quality together. While the NOI addresses these subjects, they are addressed as if they are completely separate issues. In fact, siting and service quality are inextricably related, and Sprint encourages the FCC to consider the two subjects together and to provide information to the public and Congress regarding siting impacts on service and infrastructure deployment.

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

In the Matter of	)	
	)	
Implementation of Section 6002(b) of the	)	WT Docket No. 04-111
Omnibus Budget Reconciliation Act of 1993	)	
	)	
Annual Report and Analysis of Competitive	)	
Market Conditions with Respect to Commercial	)	
Mobile Services	)	
	)	

SPRINT CORPORATION REPLY COMMENTS

Sprint Corporation, on behalf of its wireless operating subsidiary ("Sprint"), submits these reply comments in response to the Notice of Inquiry ("NOI") that seeks information regarding the status of competition in the commercial mobile radio services ("CMRS") industry.[1]

Sprint encourages the Commission in preparing its ninth annual CMRS competition report to review and include information from the recent analysis of the CMRS industry conducted by the former FCC Chief Economist, Thomas W. Hazlett.[2] This economic paper analyzes in considerable detail the impacts that wireless industry regulation (particularly state regulation) have had on consumer welfare.

---

[1] *See Implementation of Section 6002(b) of the Omnibus Budget Reconciliation Act of 1993, Annual Report and Analysis of Competitive Market Conditions with Respect to Commercial Mobile Services*, WT Docket No. 04-111, *Notice of Inquiry*, FCC 04-38 (March 24, 2004)("*CMRS NOI*"). Sprint notes an inaccuracy in the NOI. Twice the FCC states that AT&T Wireless was the first carrier in the country to introduce in May 1998 a "one-rate" plan. *See id.* at n.54 and ¶ 65. In fact, Sprint PCS introduced such a plan eight months earlier. *See, e.g.,* NEWSBYTES, *Telecom Roundup – Sprint PCS Sets Pricing Across US* (Sept. 15, 1997); COMMUNICATIONS DAILY, *Sprint PCS Fires Competitive Salvo with Calling Plans* (Sept. 16, 1997); RADIO COMM. REPORT, *Sprint Starts Nationwide Pricing Plan* (Sept. 22, 1997); COMMUNICATIONS DAILY, *AT&T Wireless Joins Sprint PCS in Single-Rate Offer* (May 8, 1998).

[2] *See* Thomas W. Hazlett, *Is Federal Preemption Efficient in Cellular Phone Regulation?,* 56 FED. COMM. L.J. 155 (Dec. 2003)("Hazlett Economic Analysis").

I. BY ANY MEASURE, THERE IS EFFECTIVE COMPETITION IN THE CMRS MARKET, AND THE SUBMISSION OF ADDITIONAL DATA WOULD NOT CHANGE THAT CONCLUSION

Congress has directed the Commission to prepare annually "an analysis of whether or not there is effective competition" in the CMRS market.[3] No party can legitimately contend that "effective competition" does not exist in the mobile services market. As Chairman Powell stated two years ago – before an additional 30 million Americans began subscribing to the service and before CMRS providers introduced an innovative array of data and Internet services:

> I think that wireless is an extraordinary success story. * * * [A]t the Commission we often talk about the wireless industry as our poster child about principles, about competitive markets, market economics and the benefits of the competitive model, because I think when you look at all the industries we regulate at the FCC, none is as competitively healthy from our perspective – a regulatory perspective – as the wireless industry.[4]

Other Commissioners share this view:

- Commissioner Abernathy told Congress last year that "[c]onsumers have benefited from the fruits of this [wireless] competition, as providers have been forced to lower prices sharply and to introduce a broad array of innovative new calling plans, features, and services."[5]
- Commissioner Martin has noted that CMRS competition has become so intense that consumers "are now substituting wireless phones for their landline phones."[6]
- Commissioner Adelstein has observed that the "mobile wireless industry is marked by dynamic competition."[7]

---

[3] *See* 47 U.S.C. § 332(c)(1)(C).

[4] Remarks of Michael K. Powell, Dialogue with Thomas Wheeler, CTIA President, at the National Association of Cellular Telecommunications and Internet Association (March 19, 2002).

[5] Written Statement of Kathleen Q. Abernathy on the State of Competition in the Telecommunications Industry, before the Senate Committee on Commerce, Science and Transportation (Jan. 14, 2003). *See also* Written Statement of Kathleen Q. Abernathy on the Health of the Telecommunications Sector, before the House Committee on Energy and Commerce, Subcommittee on Telecommunications and the Internet (Feb. 26, 2003)("The telecommunications marketplace is more competitive than at any time in history, with the wireless sector enjoying the most robust competition.").

[6] Separate Statement of Commissioner Kevin J. Martin, *Hearing Aid Compatibility Act Order*, 18 FCC Rcd 16753, 16791 (Aug. 14, 2003).

It is thus not surprising that the Commission unanimously concluded last July in its *Eighth Annual CMRS Competition Report* that "effective competition exists in the CMRS marketplace."[8]

The Commission commenced this NOI to obtain "detailed, comprehensive, and independent data" so it could determine in its ninth annual report "*if* there is still effect competition in the CMRS market."[9] Sprint agrees with Commissioner Abernathy that the NOI begins with the wrong premise:

> It would therefore seem appropriate to start this year's inquiry with a presumption of effective competition. But we don't. We start from scratch as if there has never been any data gathered about the nature of the wireless industry, the competitiveness of the market, and the wide variety of service offerings available to consumers. . . . [W]e should not have to reinvent the wheel year after year.[10]

In fact, the most notable development over the past year has been the introduction of wireless number portability, which not only enhances competition in the CMRS market (because it is now even easier for customers to switch service providers), but will also help guarantee that the market remains competitive. Moreover, innovations that benefit customers continue to be offered, as illustrated by Sprint's "Fair and Flexible" plan introduced just last week. This plan allows customers with a base plan of 300 minutes (starting at $35 monthly) to pay for additional minutes in 25 minute increments – starting at 25 minutes for $2.50 and getting less expensive per minute at higher levels.[11] With this plan, customers will no longer have to choose between a plan with too many minutes (that may never be used) or a plan with too few minutes (resulting in potential per-minute overage charges of 40 cents or more).

---

[7] Remarks of Jonathan S. Adelstein before the 21st Annual Institute on Telecommunications Policy and Regulation (Dec. 4, 2003).

[8] *See Eighth Annual CMRS Report*, 18 FCC Rcd 14783 at ¶ 220 (July 14, 2003).

[9] *CMRS NOI* at ¶ 3 (emphasis added).

[10] *CMRS NOI*, Separate Statement of Commissioner Abernathy.

[11] *See* THE WALL STREET JOURNAL, *Sprint Unveils New Cellphone Plan* (May 3, 2004).

CTIA's extensive comments document that there is a wealth of publicly available data – including industry web sites, press releases, third-party sources – that address the competitive state of the CMRS industry. This is the very data that the Commission has relied upon in preparing its first eight annual competition reports. In addition, investors use this publicly available data in determining whether to invest in the CMRS industry and, if so, which particular CMRS provider. Consumers also use this data in determining whether to use one provider as opposed to another, and as the Commission acknowledges, there are "considerable sources of information available to consumers."[12] Especially with its decision to focus on the state of competition "from the consumer's point of view,"[13] the Commission should focus on the publicly available information that is currently available to consumers and investors.

The NOI expresses concern that the methodology used in prior reports to determine the number of carriers serving a geographic area may include "some undetermined degree of overcounting."[14] But the Commission asks the right question: Is this overcounting "significant" and does it "materially affect the determination of mobile telecommunications service availability and market structure?"[15]

Sprint submits that the amount of any overcounting is neither significant nor material to the question before the Commission – namely, "whether or not there is effective competition" in the CMRS market? The degree of overcounting necessarily is small,[16] and in terms of determin-

---

[12] *CMRS NOI* at ¶ 45.

[13] *See CMRS NOI* at ¶ 1.

[14] *See CMRS NOI* at ¶ 10. *See also* ¶ 11 and nn.24 and 32.

[15] *Id.* at ¶ 10.

[16] Given the economics of constructing CMRS networks, carriers generally serve more populated areas before less populated areas. Thus, the areas where CMRS networks do not cover the entire county are generally in sparsely populated rural areas. Even in rural areas, carriers generally serve towns before the remote areas of the county. Consequently, any overcounting necessarily is small.

ing effective competition, it makes little difference whether only 235 million people – as opposed to 236 million for example – have a choice among five or more CMRS providers.[17]

Carriers build networks to serve markets, and modern mobile networks do not neatly correspond to county boundaries drawn during the 18th or 19th centuries. The fact that there may be imperfections in one of the metrics the Commission examines because it is easier administratively to compute "POP coverage" *via* county boundaries does not mean that the Commission should stop utilizing this metric. This is especially the case given the enormous costs that the Commission would incur in attempting to achieve more precision and the marginal benefits that would ensue from this additional work.

It also bears emphasis that perfection is not required. Congress has directed the Commission to prepare "an analysis of whether or not there is effective competition" in the CMRS market – not determine the precise level of competition within the industry.[18] Determining with precision the exact level of competition requires definitions of the relevant geographic and product markets, which the Commission recognizes is "complicated and time consuming due to the large number of mobile operators."[19] This level of detail is better developed in the context of particular merger/acquisition proceedings, such as the AT&T/Cingular proceeding currently pending before the Commission.

In summary, there exists vigorous competition in the CMRS market *regardless of the metrics utilized*. There is a wealth of public data that is available to consumers, investors, ana-

---

[17] *See Eighth Annual CMRS Competition Report*, 18 FCC Rcd 14783 ¶ 18 (2003). It is also noteworthy that a carrier serving only a portion of a county often influences the prices charged by a carrier serving all of a county. In other words, ubiquitous coverage in a county does not necessarily dictate the level of competition that a carrier provides to a particular market.

[18] *See* 47 U.S.C. § 332(c)(1)(C).

[19] *CMRS NOI* at ¶ 9.

lysts and regulators. No purpose would be served by having service providers generate additional data – especially where, as here, such data would not change the Commission's conclusion.

II. THE COMMISSION SHOULD MONITOR STATE REGULATORY DEVELOPMENTS FOR NEGATIVE IMPACTS ON THE CMRS MARKET

Sprint agrees with CTIA that "[o]ne new area the Commission should monitor is the effects of state and local regulation of CMRS on competition and consumers":

> A variety of state and local policies increase wireless service costs by imposing taxes, fees, and regulatory burdens. The prices that consumers pay are increased, and competition is weakened and distorted, by regulatory policies that raise wireless costs or create artificial competitive advantages for competing transmission technologies.[20]

Indeed, it is important for the Commission to understand the deleterious effects that state regulation (however well intended) has had, and would have, on wireless customers. Sprint submits that, if continued unchecked, patchwork state regulation will undermine the efficiencies and economies of scale that wireless carriers have achieved through national networks. Furthermore, state regulation will stymie innovation in the CMRS marketplace if carriers are required to comply with varied levels of state-specific regulation. The Commission should analyze the negative impact of varying state regulation upon CMRS service, a service subject to federal regulation and national attributes.

Commercial wireless services are not constrained by state boundaries and have therefore gravitated to national networks.[21] Dr. Hazlett documents in his recent analysis that CMRS net-

[20] CTIA Comments at 4.

[21] In this sense, network means more than just the physical infrastructure, but includes such aspects as operations, systems, marketing and pricing.

works "exhibit strong economies of scale and scope, and national networks have proven crucial to industry development":

> Perhaps the best-documented observation about wireless telephone markets is that national networks are efficient. * * * As larger networks formed, prices plummeted and demand skyrocketed.[22]

The Commission has similarly observed that "operators with larger footprints can achieve certain economies of scale and increased efficiencies compared to operators with smaller footprints":

> Such benefits, along with advances such as digital technology, have permitted companies to introduce and expand innovative pricing plans such as digital-one-rate ("DOR") type plans, reducing prices to consumers.[23]

As evidence by the decreased prices paid for wireless services, consumers have benefited by the increased efficiencies associated with national networks and operations. Importantly, all wireless customers benefit by the efficiencies national carriers have been able to achieve.

One of the reasons why carriers were able to form national networks and provide national pricing is that CMRS service has not been subject to pervasive state regulation. Hence, carriers have been free to design and offer products and services on a national basis and were not constrained by state-by-state regulation. Indeed, Congress revolutionized the CMRS industry eleven years ago when it preempted states from regulating CMRS entry and rates.[24] Studies have

---

[22] Hazlett Economic Analysis, 56 FED. COMM. L.J. at 156-57, 193 and 196.

[23] *Seventh Annual CMRS Competition Report*, 12985, 12997-98 (2002). *See also Fifth Annual CMRS Competition Report*, 15 FCC Rcd 17660, 17669 n.42 (2000)("Analysts have drawn similar conclusions, predicting that the current consolidation will intensify competition among nationwide wireless providers."); *GTE/Bell Atlantic Merger Order*, 15 FCC Rcd 14032, 14139 ¶ 235 (2000)("By lowering the cost of offering nationwide service plans, the larger footprint will enable it to compete with other nationwide wireless competitors more effectively, making possible more attractive rates and better network coverage."); *Fourth Annual CMRS Competition Report*, 14 FCC Rcd 10145, 10159-60 (1999)("According to analysts, it can be significantly more expensive for regional operators to provide customers with this [one-rate plan] feature than for national operators.").

[24] *See* 47 U.S.C. § 332(c)(3)(A)("[N]o State or local government shall have any authority to regulate the entry of or the rates charged by any commercial mobile service, expect that this paragraph shall not prohibit a State from regulating the other terms and conditions of commercial mobile services.").

documented that wireless service prices were higher in rate-regulated states than in unregulated states, and wireless customer penetration in regulated states was only a fraction of the penetration levels in unregulated states.[25] Several states thereafter petitioned the FCC to continue their rate regulation, but the Commission wisely denied all of these petitions.[26]

As Dr. Hazlett has observed, while wireless prices increased during the period before rate deregulation, prices have plummeted since states have been barred from regulating wireless service prices, with "the average price per minute of use declining seventy-nine percent between 1993 and 2002."[27] As importantly, "total minutes of use have increased more than *twenty-fold* during this period."[28] Freedom from price regulation has provided enormous benefits for the American wireless consumer in the form of lower prices and innovative applications such as web services.

Take, for example, a wireless customer living in Los Angeles. In 1994, the last year that the California Public Utility Commission ("CPUC") engaged in rate regulation, the "best price" available to the L.A. customer was $85.08 for 120 minutes.[29] Today, that same L.A. customer can obtain from Sprint PCS for $35 monthly 300 anytime minutes, unlimited night and weekend minutes, no extra charges for long distance calls, no extra charges for caller ID, voice mail and other features – and the ability to purchase additional anytime minutes for 10 cents or less.

---

[25] *See* Hazlett Economic Analysis, 56 FED. COMM. L.J. at 206-21. For example, one economist estimated that during the time that the California PUC regulated wireless rates, wireless customers paid more than $360 million annually than they would have paid without rate regulation. *See* Professor Jerry A. Hausman, *The Cost of Cellular Telephone Regulation,* at 18 (Jan. 3, 1995).

[26] *See, e.g., California Rate Petition Denial Order,* 10 FCC Rcd 7486 (1995), *recon. denied,* 11 FCC Rcd 796 (1995); *Connecticut Rate Petition Denial Order,* 10 FCC Rcd 7025 (1995), *aff'd Connecticut* v. *FCC,* 78 F.3d 842 (2d Cir. 1996).

[27] Hazlett Economic Analysis, 56 FED. COMM. L.J. at 168, 212 and 214 Figure 3.

[28] *Id.* at 168 (emphasis in original).

[29] *See First Annual CMRS Competition Report,* 10 FCC Rcd 8844, 8882 Table 7 (1995).

In the 1993 legislation, Congress did carve out an exception for state regulation by permitting states to regulate the "other terms and conditions" of CMRS.[30] This exemption from federal preemption was perhaps understandable at the time. In 1993, the wireless telephony market consisted of only two cellular carriers, which the FCC observed was "less than fully competitive."[31] In addition, the cellular market at the time was a local/regional market – not a national market. In 1992, the network of the largest cellular carrier (McCaw) served only 25 percent of the population.[32] The network of the largest Bell cellular carrier (BellSouth) served less than 18 percent of the population.[33] State regulation of "terms and conditions" was thus arguably compatible with the way the CMRS industry was structured in 1993.

The CMRS industry, however, has undergone radical change over the last eleven years. There are today six national carriers, and they collectively serve approximately 80 percent of all wireless customers.[34] As noted above, customers have benefited enormously from the efficiencies that the national carriers have been able to achieve. It is also noteworthy that the dramatic growth in the CMRS industry – number of customers, average minutes-of-use ("MOU"), innovative pricing, improved service quality, introduction of innovative features and capabilities – all occurred without state regulation. As the Commission recognizes in its NOI, freedom from regulation has "allowed providers to operate at a competitive and efficient scale of operation":

---

[30] *See* n. 24 *supra*.

[31] *First Annual CMRS Competition Report*, 10 FCC Rcd 8844, 8845 ¶ 4 (1995). *See also id.* at 8866-67 ¶ 65.

[32] *See* Hazlett Economic Analysis, 56 FED. COMM. L.J. at 196, Table 9.

[33] *See id.*

[34] *See* Merrill Lynch, *The Next Generation VIII*, at 12, Table 7, and 25 (March 15, 2004). The six national carriers plus Alltel serve approximately 85 percent of all wireless customers. *See id.*

> This [deregulatory] policy enables these providers to serve customers at prices that reflect the cost savings of efficient operation among other factors.[35]

This is beginning to change, however, as states (both regulators and legislatures) are showing an increased interest in imposing new regulations on the CMRS industry. For example, the California Public Utilities Commission ("CPUC") is considering the adoption of a "bill of rights" that would, among other things, regulate wireless service advertising and billing and call into question the ability of carriers and customers to enter into service contracts (which have allowed carriers to subsidize handset prices). The CPUC is considering this proposal even though there is no credible evidence of any market failure or need for new rules, even though the CMRS industry has already adopted a national "bill of rights" (*i.e.,* the Consumer Code), and even though estimates are that the costs of an earlier version of the proposed CPUC regulation would add over $45 annually to the bill of each wireless customer in California.[36]

Such state regulation might be not considered so harmful if it were easy for carriers to implement, so the costs imposed by particular state regulators could be readily identified, segregated and paid for entirely by those state's customers despite harm to those consumers. However, the problem is that it is not easy for national carriers with national systems and practices to implement state-specific regulation. For example:

- National carriers engage in national advertising because of the resulting efficiencies that benefit customers. For example, the CPUC is considering requiring that all advertising in the State include 13 "key rates and terms," including the requirement that a carrier include "any other information necessary to make the key rates, terms and conditions information disclosed not misleading." This type of requirement may force carriers to develop and use two sets

[35] *CMRS NOI* at ¶ 4.

[36] *See* William Palmer, LECG, LLC, *The Financial Implications of Proposed Telecommunications Consumer Protection Rules on California Wireless Carriers and Customers: Cost Study Report* (Sept. 2003). The CPUC has modified its proposal since this cost study was completed last September, but did not provide the industry sufficient time to prepare a cost estimate of its current set of regulatory proposals.

of advertisements – one for California and a different for the rest of the country – introducing new inefficiencies.

- National carriers like Sprint have one national customer care system. Compliance with the CPUC proposal would require Sprint to modify its current system to include a "California specific" supplement for California customers. Thousands of customer care employees, who handle calls from customers throughout the country, must be trained to understand the intricacies of California-specific requirements so they can deal with California-based Sprint customers.
- National carriers like Sprint have one billing system they use nationwide. Compliance with the CPUC proposal would require Sprint to modify its billing system to accommodate the new demands imposed by the CPUC.
- The CPUC proposal may put in jeopardy the continued availability of national pricing plans in California, especially if carriers can no longer as a practical matter subsidize handset sales in the State.

State regulation over a competitive industry constitutes poor public policy under any circumstance. But state regulation of national wireless carriers is especially perverse because the costs of that regulation are not confined to the residents of the state imposing the regulation, but rather spill over to customers located in other states. As a matter of law, one state does not possess the legal authority to impose costs on residents of other states.[37] As a matter of policy, it makes no sense to permit a regulator or legislature in a single state – whether a large state like California or a small state like North Dakota – effectively to establish the regulations that apply to wireless carriers nationwide – especially when Congress established the FCC precisely to perform this function and has given the FCC the mandate to "establish a Federal regulatory framework to govern the offering of all commercial mobile services," because these services, "by their

[37] The Commerce Clause of the U.S. Constitution precludes states from enacting regulations that impermissibly burden interstate commerce. The CPUC's proposed regulations would impermissibly burden interstate commerce by forcing wireless carriers to have a separate, costly marketing system for the State of California. *See, e.g. Brown-Forman Distillers* v. *New York Liquor Authority*, 476 U.S. 573, 582 (1986); *Pike* v. *Bruce Church*, 397 U.S. 137, 146 (1970); *Morgan* v. *Virginia*, 328 U.S. 373, 377 (1946) ("Where uniformity is essential for the functioning of commerce, a state may not interpose its local regulation.").

very nature, operate without regard to state lines as an integral part of the national telecommunications infrastructure."[38]

This Commission should be principally concerned about the economics of state regulation and the consequence such regulation would have on ordinary consumers. As discussed above, regulation by even a single state could undermine the efficiencies that national carriers have achieved for the benefit of customers. And regulation by several states could destroy these efficiencies altogether – resulting in the very decentralized, fragmented wireless industry that existed a decade ago – to the detriment of consumer welfare. In the end, state-by-state regulation of a national service will clog the wheels of commerce, introducing inefficiencies that lower consumer welfare and prevent carriers from offering new and innovative services because they could not be assured of consistent state treatment.

Because of the enormous efficiencies associated with national networks and because customers have benefited so greatly from these efficiencies, Sprint urges the Commission to analyze the negative impacts of varying state regulation upon CMRS service. Wireless service is not constrained by state boundaries and wireless carriers have developed networks that are not subject to geographic limitations. Inconsistent state regulation runs the risk of unraveling the benefits that consumers have gained. As Dr. Hazlett has stated:

> To cede jurisdiction to state commissions risks undoing national network offerings that have taken years to construct and that deliver demonstrable benefit to users.[39]

---

[38] *See* H.R. CONF. REP. NO. 103-213, 103d Cong., 1st Sess. 490 (1993); H.R. REP. NO. 103-111, 103d Cong., 1st Sess. 260 (1993);

[39] Hazlett Economic Analysis, 56 FED. COMM. L.J. at 201. Assuming *arguendo* that wireless customers truly need additional consumer protections, in addition to the rights afforded by the national Consumer Code, those additional rights should be developed *nationally* so they apply to wireless customers whether located in Maine or California – including when customers move from one state to another. At least with

III. THE COMMISSION SHOULD MONITOR STATE AND LOCAL TAXATION DEVELOPMENTS

The price for wireless service has fallen dramatically in recent years, and it is appropriate for the Commission's ninth report to "focus on the benefits to consumers of effective competition such as lower prices."[40] But in conducting this analysis, it is important that the Commission also focus on the impact of state and local taxes and fees upon wireless service.

While the rates for wireless service have fallen dramatically, in many states this decrease has been more than offset by increases in taxes paid by wireless users. For example, the State of Pennsylvania recently extended the 5 percent gross receipts tax to wireless service, almost doubling the effective tax rate for the Pennsylvania wireless user. Several states already have state and local tax rates equal to almost one-sixth of the wireless bill that double the general commercial tax rate. For example, state wireless tax rates in Florida equal 14 percent compared to a general commercial tax rate of 7 percent.[41] Similarly, in New York, the wireless tax rate is 16 percent compared to the 8 percent for general commercial services.[42] In other words, wireless service is subject to a tax rate that is double the rate applied to other consumer goods and services.

The continued onslaught of taxes and other government imposed charges upon the wireless end-user will eliminate the benefits of lower service prices and will ultimately impact not only the wireless market but also the nation's economy and productivity (given the important role that wireless plays in these areas). The increase in total cost to the end-user decreases the demand for wireless services because wireless service is relatively elastic. As Ingraham and Si-

---

federal regulation, national carriers can modify their efficient national systems nationally, thereby minimizing the cost inefficiencies necessarily introduced by regulation.

[40] *See CMRS NOI* at ¶ 1.

[41] *See* Allan T. Ingraham and J. Gregory Sidak, Social Science Research Network, *Do States Tax Wireless Service Efficiently? Evidence on the Price Elasticity of Demand*, at Table 5 (April 2004).

dak have stated, "[a]lthough the demand for wireless service has become more elastic, wireless taxes have increased."[43] In other words, as carriers have slashed prices to expand dramatically the wireless market, state and local taxes are creating a counter-productive impact.

The Commission should study the level of state and local taxation on wireless services and should encourage states to treat wireless service as any other consumer good. As a competitive product, subject to the whims of consumer demand, there is no reason for this continued discrimination against wireless services.

IV. INTERMODAL COMPETITION WILL BE LIMITED UNTIL THE COMMISSION REMOVES CERTAIN BARRIERS TO ROBUST COMPETITION

The Commission inquires about intermodal competition, noting that consumers are beginning to substitute wireless services for landline services.[44] That this intermodal competition is developing is nothing less than remarkable, given the Commission's view only nine years ago that it was only "conjecture that wireless services can eventually compete with wireline telephone service."[45] Intermodal competition would be an enormous pro-competitive development, especially for residents in rural areas who enjoy so few choices today.

The Commission required CMRS providers to provide number portability to "promote competition between wireless and wireline carriers."[46] Last fall, the Commission gave rural local exchange carriers ("RLECs") an additional six months – until May 24, 2004 – to begin pro-

---

[42] *Id.*

[43] *Id.* at 11.

[44] *See CMRS NOI* at ¶ 69.

[45] *First Annual CMRS Competition Report*, 10 FCC Rcd 8844, 8869 ¶ 75 (1995).

[46] *Intermodal Porting Order*, 18 FCC Rcd 23697 at ¶ 9 (Nov. 10, 2003). *See also First LNP Order*, 11 FCC Rcd 8352, 8433 ¶ 155, 8436 ¶ 160 (1996).

viding number portability to wireless carriers, even though it is rural area residents who arguably are most in need of competition through wireless portability.[47]

Sprint advised the Commission last week that customers of many RLECs will not be able to port their telephone numbers to Sprint effective May 24, 2004, when the Commission's deadline expires.[48] The fundamental problem is that roughly 80 percent of all RLECs refuse even to provide to Sprint PCS the information it needs to honor an RLEC customer's port request.[49] RLECs have refused to provide this information even though the Commission has twice ruled that "Sprint's profile information exchange process is an example of the type of contact and technical information that would trigger an obligation to port."[50] Sprint urges the Commission to expeditiously address this RLEC recalcitrance so RLEC customers can port their numbers to wireless carriers and intermodal competition can flourish as intended.

V. THE COMMISSION SHOULD CONSIDER TOWER SITING AND SERVICE QUALITY TOGETHER

In one part of its NOI, the Commission inquires about tower siting issues.[51] In a different part of the NOI, the Commission asks about quality of service.[52] Sprint submits that siting and service quality are inextricably related and that, as a result, it is critically important for the Commission to consider the two subjects together for the purposes of this proceeding.

---

[47] *See Intermodal Porting Order* at ¶ 29. The FCC later extended the same relief to smaller carriers serving areas within the top 100 MSAs. *See Two Percent/Top 100 MSA LEC Waiver Order,* 19 FCC Rcd 875 (Jan. 16, 2004).

[48] *See* Sprint Ex Parte Letter, CC Docket No. 95-116 (May 6, 2004).

[49] *See id.* Sprint notes that hundreds of RLECs have filed Section 251(f)(2) petitions with state public utility commissions which likely explains the large number of carriers that have ignored Sprint's requests for LNP profile information.

[50] *See Intermodal Porting Order* at n.9; *Wireless Porting Order,* 18 FCC Rcd 20971 at n.40 (Oct. 7, 2003).

[51] *See CMRS NOI* at ¶ 28.

It is well known that wireless carriers compete for subscribers based on coverage area, network quality and reliability as well as price. Available market sources illustrate that with the exception of price, ubiquitous, reliable coverage is the most important factor for consumers in selecting a wireless provider.[53] Yet, to date, the Commission has given inadequate linkage between the difficulty carriers face in siting wireless facilities with service quality issues.

Moreover, although CMRS providers have made tremendous strides with regard to network buildout,[54] licensees continue to face significant challenges in building their networks. As Sprint previously advised the Commission, "the zoning approval process today is considerably more complex, contentious and time consuming compared to the environment cellular carriers faced when building their networks":

> It currently takes over 18 months on average for Sprint PCS to construct a new cell site (including collocations) due to the delays in the zoning approval process.[55]

Unfortunately, little has changed in the three years since Sprint advised the Commission of this problem. Today, it still takes Sprint over 18 months on average to construct a new cell site (including collocations), and there are areas of the country where Sprint site applications have been pending for three years. Indeed, in some cases, sites are never approved and companies must consider less desirable alternatives impacting reliable service in areas.

---

[52] *See id.* at ¶¶ 66-68.

[53] *See e.g.*, Roberta Wiggins and Eugene Signorini, The Yankee Group, *Competition Among U.S. Wireless Carriers Intensifies in the Pursuit of Enterprise Customers*, at 5 (April 2004).

[54] The CMRS industry built over 162,000 cell sites by the end of 2003, five times the number of sites (30,046) operated at the end of 1996. *See* CTIA Semi-Annual Wireless Industry Survey (Dec. 2003).

[55] Sprint PCS Reply Comments, WT Docket No. 01-108, at 9 (Aug. 1, 2001). *See also* Sprint PCS Reply Comments, WT Docket No. 00-193, at 18-24 (Feb. 5, 2001). Sprint incorporates by reference the numerous siting-related cases listed in the previous filings. The impact of these decisions has proliferated. *See id.* at 23.

Tower siting remains so cumbersome that Cingular and AT&T Wireless recently noted that the difficulties associated with infrastructure deployment played a role in deciding that a merger would benefit both companies:

> Absent the [proposed] merger, the ability of either Cingular or AWS to improve quality and roll out new services is limited. In both urban and rural areas, for example, it is becoming increasingly difficult to improve quality by splitting existing cells, because there are limits on how many towers can be built. To split cells, a company must find a tower location with the right coverage and then address zoning, environmental, and political issues merely to have the right to build the tower. This is both time-consuming and costly . . . .[56]

The fact that the difficulty associated with tower siting was linked to service quality and described as one of the reasons for two large companies to merge is, in itself, a remarkable statement about the current state of tower siting/infrastructure deployment.

In fact, in many areas, the difficulties associated with tower siting have become more difficult, not less, over time. As the Commission is well aware, local zoning difficulties are not the only obstacles carriers must now address with regard to tower siting. There also exists a growing list of federal regulatory requirements that implicate the deployment of wireless facilities and, concurrently, service quality. One need look no further than the Commission's one-year-old Environmental Action Plan for an illustration of the myriad issues involved in tower construction.[57] More specifically, in the area of tower siting, the Commission currently has pending two rulemakings,[58] a Notice of Inquiry,[59] ongoing negotiations with state and federal agencies regarding

---

[56] Cingular/AT&T Wireless Application for Transfer of Control, WT Docket No. 04-70, at 15 (March 18, 2004).

[57] *See* FCC News, *Environmental and Historic Preservation Action Plan – Statement by FCC Chairman Michael K. Powell* (May 1, 2003). Chairman Powell established this action plan to "manage the expansion of communications infrastructure in a way that best preserves out Nation's environmental and historic resources." *Id.* at 1.

[58] *See Nationwide Programmatic Agreement Regarding the Section 106 National Historic Preservation Act Review Process,* WT Docket No. 03-128, *Notice of Proposed Rulemaking,* FCC 03-125, 18 FCC Rcd 11664 (June 9, 2003); *Proposed Changes in the Commission's Rules Regarding Human Exposure to Ra-*

issues associated with the Endangered Species Act or Migratory Bird Treaty Act,[60] ongoing negotiations with a coalition of Indian tribes and the development of "Best Practices" for the siting of communications towers, [61] as well as numerous petitions filed by environmental organizations regarding claimed harms imposed by specific towers.[62]

Given the importance of service quality to consumers, Sprint submits that the Commission can no longer address tower siting issues in isolation. Rather, in all instances where it is addressing siting issues, the Commission should consider the ramifications of any proposal on quality of service. Similarly, in all instances where it is addressing quality of service issues, the Commission should consider the numerous challenges carriers face in attempting to build new cell sites to improve service quality. Finally, in light of public perceptions about the importance of coverage to service quality, the Commission should provide information to the public and Congress regarding the connection between tower siting and the deployment of the infrastructure necessary to maintain ubiquitous, reliable networks.

---

diofrequency Electromagnetic Fields, ET Docket No. 03-137, *Notice of Proposed Rulemaking,* FCC 03-132, 18 FCC Rcd 13187 (June 26, 2003).

[59] *See Effects of Communications Towers on Migratory Birds,* WT Docket No. 03-187, *Notice of Inquiry,* FCC 03-205, 18 FCC Rcd 16938 (Aug. 20, 2003).

[60] *See, e.g.* FCC News, *Wireless Bureau Announces the State of Michigan to Initiate a Study Assessing the Impact of Communications Towers on Migratory Birds* (Sept. 17, 2003). It is Sprint's understanding that the Wireless Bureau is currently working with the Fish and Wildlife Service to address issues related to implementation of the Endangered Species Act.

[61] *See* FCC News, *FCC Signs Historic Tower Siting Agreement with Tribes and Streamlines Tower Review* (Feb. 3, 2004); *Memorandum of Understanding Between the FCC and the United South and Eastern Tribes Regarding Recommended Best Practices and the Section 106 Process* (Feb. 3, 2004). This MOU states that the "Commission and USET are in the final stages of developing a Best Practices document that the Commission and USET encourage Applicants and USET Tribes to use." *Id.* at 3.

[62] *See e.g.,* Petition for an Order to Require an Environmental Assessment to be Filed by Sprint PCS, Inc for Seven Proposed Construction Towers in Rappahannock County, Virginia MTS # 00288, (Dec. 5, 2001); *Public Employees for Environmental Responsibility,* 16 FCC Rcd 21439 (2001); Friends of the Earth. and Forest Conservation Council, *Memorandum Opinion and Order,* 17 FCC Rcd. 201 (2002).

VI. CONCLUSION

For the foregoing reasons, Sprint respectfully requests that the Commission take steps consistent with the positions articulated above.

Respectfully submitted,

SPRINT CORPORATION

_____/s/ *Luisa L. Lancetti*_____
Luisa L. Lancetti
Vice President, Wireless Regulatory Affairs
Roger C. Sherman
Senior Attorney

Sprint Corporation
401 9th Street, N.W., Suite 400
Washington, D.C. 20004
202-585-1924

Jeffrey M. Pfaff
Attorney
Sprint Corporation
6450 Sprint Parkway
Overland Park, KS 66251
913-315-9294

May 10, 2004

While the FCC has resolved these petitions, there are a number of undocketed petitions that allege similar environmental harm as a result of tower construction.